

ORDER NO. 1629

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Plus 2C Contracts (MC2012-5)
Negotiated Services Agreements

Docket No. CP2013-36

ORDER APPROVING ADDITIONAL
GLOBAL PLUS 2C NEGOTIATED SERVICE AGREEMENT

(Issued January 23, 2013)

I. INTRODUCTION

The Postal Service seeks to include a new contract (Agreement) within the Global Plus 2C product on the competitive product list.¹ For the reasons discussed below, the Commission approves the request.

¹ Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 2C Contract Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 8, 2013 (Notice). The Notice was filed pursuant to 39 CFR 3015.5. *Id.* at 1.

II. BACKGROUND

Product history. Global Plus 2C customers are Postal Qualified Wholesalers or other large businesses that offer mailing services to end users for shipping articles via Global Direct and/or International Business Reply Service. *Id.* at 6. The Commission added Global Plus 2C, which was authorized by Governors' Decision No. 08-10 and is based on the pricing formula in Governors' Decision No. 11-6), to the competitive product list by operation of Order No. 1135.² The Commission concurrently included the agreements filed in companion Docket Nos. CP2012-10 and CP2012-11 within Global Plus 2C, and designated the two agreements as baseline agreements for assessing the functional equivalency of future agreements proposed for inclusion within the Global Plus 2C product. *Id.*

The Agreement; effective date and term. The Postal Service describes the Agreement as the successor to the Docket No. CP2012-11 agreement. Notice at 3. It states the Agreement is on behalf of the same company that signed the agreement approved in Docket No. CP2012-11, although the company is now included within a company that has a different name. *Id.* The Agreement's scheduled effective date is January 23, 2013. *Id.* It expires either the day prior to the date in January 2014 when Canada Post Corporation institutes certain domestic price changes or, in the absence of a price change, on January 31, 2014. *Id.* at 5.

Commission action. In Order No. 1612, the Commission resolved a potential gap in coverage between the two agreements by authorizing the Docket No. CP2012-11

² Order No. 1135, Docket Nos. MC2012-5, CP2012-10, and CP2012-11, Order Adding Global Plus 2C to the Competitive Product List and Approving Functionally Equivalent Global Plus 2C Agreements, January 13, 2012.

agreement to continue until the effective date of the instant Agreement.³ In Order No. 1616, the Commission provided notice of the Postal Service's filing, appointed a Public Representative, and provided interested persons with an opportunity to comment.⁴

III. THE POSTAL SERVICE'S POSITION

The Postal Service asserts that its filing demonstrates that the Agreement complies with the requirements of 39 U.S.C. § 3633, is functionally equivalent to the baseline agreement, and should be added to the Global Plus 2C product. Notice at 9. It asserts that the Agreement fits within the Mail Classification Schedule language for Global Plus 2C agreements as outlined by Governors' Decision No. 08-10. *Id.* at 4.

The Postal Service asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and similar functional terms, but states that prices may differ. *Id.* at 5-6. However, the Postal Service also identifies, in addition to the change in the customer's name, differences between the instant Agreement and the Docket No. CP2012-11 agreement. These differences are the non-inclusion of Global Bulk Economy (GBE) service; revisions concerning Qualifying Mail; the negotiated minimum revenue commitment; the addition of International Business Reply

³ The potential for a gap in coverage arose because the Docket No. CP2012-11 agreement was scheduled to expire January 14, 2013, but the instant Agreement would not be able to take effect sooner than January 23, 2013, due to its January 8, 2013 filing date, a related 15-day advance notice requirement, and the need for regulatory approval. See Docket No. CP2012-11, Motion of United States Postal Service for Temporary Relief, January 7, 2013 (Motion); Docket No. CP2012-11, Order Granting Motion for Temporary Relief, January 8, 2013 (Order No. 1612). The Postal Service later filed a formal modification identifying January 31, 2013 as the expiration date of the Docket No. CP2012-11 agreement. See Docket No. CP2012-11, Notice of the United States Postal Service of Filing Modification One to Global Plus 2C Negotiated Service Agreement, January 11, 2013.

⁴ Notice and Order Concerning an Additional Global Plus 2C Contract, January 10, 2013 (Order No. 1616).

Service (IBRS); other administrative and transactional terms; and related conforming changes, including renumbering.⁵

The Postal Service asserts that the differences it has identified do not affect the fundamental service being offered or the fundamental structure of the contract, and claims that nothing detracts from the conclusion that the Agreement “is functionally equivalent in all pertinent respects” to the Docket Nos. CP2012-10 and CP2012-11 baseline agreements. *Id.*

IV. COMMENTS

Comments were filed by the Public Representative.⁶ No other comments were received.

The Public Representative’s review of the Postal Service’s filing leads him to conclude the Agreement complies with section 3633(a) and is functionally equivalent to the baseline agreements.

Functional equivalence. The Public Representative observes that the Postal Service states that the Agreement is similar to the contracts filed in Docket Nos. CP2012-10 and CP2012-11 in terms of cost and market characteristics and functional terms and benefits, but also identifies certain differences. PR Comments at 3. The Public Representative reviews these differences, and characterizes the elimination of GBE and the addition of IBRS as the most notable ones. *Id.* However, he agrees with the Postal Service that these differences do not affect either the fundamental service or the fundamental structure of the contract, and that the Agreement is functionally equivalent in all pertinent aspects to the baseline contracts. *Id.* at 3-4.

⁵ The Postal Service identifies the differences between the instant Agreement and the Docket No. CP2012-11 agreement (including conforming changes and renumbering) as affecting the following articles, in whole or part: Articles 1 through 3; 7 through 9; 12 through 15; 18 and 19; 26, 28, 30 and 31; and Annex 1. Notice at 7-8. The Postal Service further identifies articles 35 (intellectual property, co-branding, and licensing) and 36 (warranties and representation) as additional articles. *Id.* at 8.

⁶ Public Representative Comments on a Postal Service Notice Concerning an Additional Global Plus 2C Negotiated Service Agreement, January 18, 2013 (PR Comments).

Consistency with 39 U.S.C. § 3633. The Public Representative states that the Postal Service's financial model indicates that the negotiated prices in the contract should generate sufficient revenue to cover costs. He therefore concludes that the Agreement appears compliant with section 3633(a). *Id.* at 4.

V. COMMISSION ANALYSIS

Scope and nature of review. The Commission's responsibilities in this case are to ensure that the Agreement (1) is functionally equivalent to the baseline agreement (Docket No. CP2012-11); and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 CFR 3015.5 and 3015.7).

Functional equivalence. The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and classification criteria established in the controlling Governors' Decisions; and comports with 39 U.S.C. § 3633 and Commission rules. It also has considered the Public Representative's views. The Commission agrees that the instant Agreement and the baseline agreement are substantially similar, and that any differences do not undermine a finding of functional equivalency. The Commission therefore concludes that the Agreement may be included in the Global Plus 2C product on the competitive product list.

Cost considerations. The Commission has reviewed the Notice, supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs, as required by 39 U.S.C. § 3633(a)(2). It finds that the Agreement should not result in competitive products being subsidized by market dominant products as prohibited by 39 U.S.C. § 3633(a)(1). It also finds the Agreement should have a positive effect on competitive products' contribution to institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates that it is consistent with the provisions applicable to rates for competitive products.

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the Agreement. Upon expiration of the Agreement or termination of the Agreement by either party, the Postal Service shall inform the Commission of this development and the date of termination. In addition, within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-36 is included within the Global Plus 2C product on the competitive product list.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.
3. The Postal Service shall promptly notify the Commission if the Agreement ends prior to the scheduled expiration date.
4. Within 30 days of expiration or termination of the Agreement (Docket No. CP2013-36), the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group, including any penalties paid.

By the Commission.

Ruth Ann Abrams
Acting Secretary